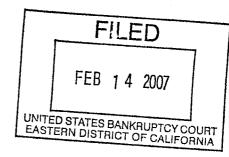


4 5



UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION FOR RELIEF FROM AUTOMATIC STAY NOT INTENDED FOR PUBLICATION

These findings of fact and conclusions of law, which are not intended for publication, are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

Debtor filed his voluntary chapter 7 petition on November 8, 2006. He scheduled real property commonly known as



10429 Forest Ridge Court, Stockton, CA 95209 ("property") as property of the estate. The first meeting of creditors was held on December 7, 2006. The chapter 7 trustee filed a report finding that there is no property available for distribution from the estate over and above that exempted by the debtor. Debtor was discharged from all dischargeable debts on February 7, 2007.

On January 22, 2007, EMC Mortgage Corporation ("movant") filed a motion, notice, and declaration requesting that this court vacate the automatic stay to permit movant to foreclose upon the property. The fair market value of the property is approximately \$479,000.00. Movant has a lien on the property in the approximate amount of \$438,864.24. There are other liens against the property in the approximate amount of \$53,000.00.

No opposition to the motion was filed within the time prescribed by Local Bankruptcy Rule 9014-1(f)(1). The parties have consented to taking evidence by affidavit and have not demonstrated that there is any disputed material factual issue.

See L. Bankr. R. 9014-1(f)(1). The evidentiary record is closed. Id.

Upon review of the record, the court determined that the written record was adequate and that no oral argument is necessary.

Conclusions of Law

The automatic stay of acts against debtor <u>in personam</u> expires when the debtor is granted a discharge. 11 U.S.C.

§ 362(c)(2)(C). Acts against property of the estate remain stayed until the earliest of the time when the bankruptcy case is closed, dismissed, or the property ceases to be property of the estate. 11 U.S.C. § 362(c). The automatic stay may be terminated earlier if debtor fails to protect the secured party's interest adequately, § 362(d)(1), and, with respect to a stay of an act against property, debtor does not have equity in the property, § 362(d)(2)(A), and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2)(B). The issue of whether the property is necessary to an effective reorganization is not considered in a chapter 7 case because no reorganization is contemplated in a chapter 7 case.

Although the debtor does not appear to have any equity in the property, since the debtor was granted a discharge, the automatic stay has expired as to the debtor. Thus, the motion insofar as it is directed at the interest of the debtor is moot and will be denied.

However, the motion will be granted as to the interest of the trustee.

An appropriate order will issue.

Dated: February \\, 2007

UNITED STATES BANKRUPTCY JUDGE

1

2

3

4

5

7

8

10

11

12

13

14

15 16

17

18

19 20

21

2223

24

25 26

27

28

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Rick Galindo 10429 Forest Ridge Court Stockton, CA 95209

Dan Nelson, Esq. P.O. Box 1770 Stockton, CA 95201

JaVonne M. Phillips, Esq. Jenny Judith Ha, Esq. McCarthy & Holthus, LLP 1770 Fourth Avenue San Diego, CA 92101

Michael D. McGranahan P.O. Box 5018 Modesto, CA 95352

Office of the United States Trustee United States Courthouse 501 "I" Street, Suite 7-500 Sacramento, CA 95814

Dated: 2/15/07

Deputy Clerk